



County of Los Angeles CHIEF EXECUTIVE OFFICE

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Chief Executive Officer

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August 8, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

LAW ENFORCEMENT CONTRACTUAL SERVICES LIABILITIES PROTECTION

On July 1, 2008, your Board requested the Chief Executive Office (CEO) and County Counsel to report back to the Board on the following:

- Work with the Sheriff Department to determine how the County could structure its agreements for law enforcement services, such that the County is fully indemnified in any claims or lawsuits arising from the course and scope of these contracts; and
- Provide a written analysis with recommendations to reduce the County's exposure to any claims or lawsuits that may arise from agreements for law enforcement services.

Overview

As part of the services offered by the Sheriff Department, public agencies and private parties have the opportunity to acquire law enforcement services on a contractual basis. Transit agencies, movie companies, and sporting teams are an example of entities that contract with the Sheriff Department for services such as personnel security, traffic and crowd control.

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Contracts between the Sheriff Department and their respective customers have raised concern of how the County structures its law enforcement contracts and manages the liability that may arise from the services provided.

Contracts for Law Enforcement Services that Fully Indemnifies the County in any Claims or Lawsuits

In consultation with County Counsel, it has been concluded that the request to structure agreements for law enforcement services so that the County is fully indemnified may be legally unenforceable. State law holds that a contract that exempts a party of tort liability from harm caused intentionally or recklessly is unenforceable on grounds of public policy.

Furthermore, a contract is also unenforceable if it exempts a party for harm caused by negligent acts where 1) a term exempts an employer from liability to an employee for injury during the course of employment, 2) a term exempts one charged with a duty for public service from liability to one whom that duty is owed for compensation, or 3) where the other party is similarly a member of a class protected against the class to which the first party belongs.

California Civil Code Sec. 1668 also provides that "all contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

However, common law does sanction the use of limitation of liability clauses so long as they are not against public policy and not unconscionable. The current indemnity language generally included in law enforcement services contracts can be reviewed for modification within the limits of State law.

Recommendations to Reduce the County's Exposure to Claims and Lawsuits

To provide your Board with recommendations to reduce the County's exposure to claims and lawsuits, County Counsel and the Sheriff Department's Risk Management and Contract Law Enforcement Bureaus have suggested the implementation of an actuary study to be performed by the Sheriff Department with the assistance of the Auditor-Controller. An actuary study is necessary in order to establish our current liability rate as it pertains to the Sheriff Department's contract liabilities. At the conclusion of the study, the CEO will collaborate with the Sheriff Department and County Counsel to provide recommendations to your Board to address the issue of reducing the County's exposure to claims and lawsuits.

Actuary Study

The scope of the actuary study will examine our claims and lawsuit history and make determinations regarding appropriate funding levels and reserves. Due to the small number of claims and lawsuits against these funds, roughly seven (7) lawsuits and 24 claims annually, the Auditor-Controller will likely review each of these cases and determine what they believe the County's exposure would be. Since the size is relatively small, the Auditor-Controller would then try to find a similar fund and project the County's exposure based on the combined data. Next, they would determine if the funds that the County has set aside are sufficient for our projected liabilities. At the conclusion, the County will have an improved understanding to determine the appropriate insurance levels and costs. The results of the actuary study will assist in the process to determine the liability rate.

The Auditor-Controller's office indicated that the County currently does not have an actuary on staff, but they have pre-approved vendor agreements which would assist in expediting the selection process.

Insurance

The CEO and the Sheriff Department will address the issue of purchasing insurance at the conclusion of the actuary study. The reason being is that an insurance company would most likely utilize our study to set the liability rate.

In a typical setup for law enforcement service insurance protection, we can anticipate that insurance companies will require the County to retain two separate levels of coverage. At the first level, insurance companies will expect the County to take a significant level of exposure (\$2 million) and pay everything below that level. At the second level, the County may have one or more insurance policies that will protect us from a loss over our retained level up to a maximum amount (usually \$20 to \$30 million). If the maximum amount is reached, the County will assume responsibility for any losses that exceeds the limits of the coverage. There is also the possibility that County Counsel may be able to shift back the exceeded amount to the other entity via the contract language.

The Sheriff Department has indicated the timeline for selecting the vendor for the actuary study, performing the study, and investigating insurance company options is six (6) months.

Liability Trust Fund

During the actuary study, the Sheriff Department will also contact the Joint Powers Insurance Authorities (JPIA) to study the possibility of an arrangement that is similar to the Liability Trust Fund that is currently enjoyed by the Los Angeles County Contract Cities. The study with the JPIA will conclude prior to the actuary study.

Conclusion

The CEO, County Counsel and Sheriff Department will collaborate to provide your Board with a set of recommendations once the actuary study is completed and an analysis and determination of the County's exposure to claims and lawsuits is established.

If you have any questions regarding this matter, please contact Deputy Chief Executive Officer Doyle Campbell, Public Safety, at (213) 893-2374.

WTF:SRH:RDC
DC:llm

c: Executive Officer, Board of Supervisors
County Counsel
Sheriff Department
Auditor-Controller